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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. ~~425~~ 21

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), an Unincorporated Labor Organization, and MICHAEL VOLK, an Individual,
Petitioners,

vs.

PAUL S. RUSSELL,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA.

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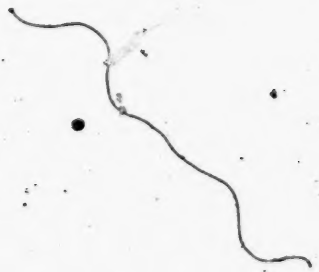
INDEX.

Cases Cited.

Statutes Cited.



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I. THE FIRST AND ONLY FEDERAL QUESTION PRESENTED HAS BEEN SETTLED.

In *United Construction Workers v. Laburnum Construction Corporation*, 347 U. S. 656, this Court stated the question then before it in these words:

> "The question before us is whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction over the subject matter of a common-law tort action for damages as to preclude an appropriate state court from hearing and determining its issues where such conduct constitutes an unfair labor practice under that act" (347 U. S. 656, at 657).

Though the questions sought to be presented by the petition for certiorari are skillfully couched in phraseology

apparently designed to avoid the impact of the *Laburnum* case, the fact remains that the only federal question involved in the present case is precisely the same as that quoted above.

Force and Violence Characterize Case.

Preventing employees from engaging in their work by threats of the use of force and violence was the wrongful conduct which was made the basis of the action in the *Laburnum* case.

Preventing the plaintiff in the present case from engaging in his work by blocking his access to his place of employment by means of mass picketing and force and violence consisting of taking hold of his car and stopping it, and threats of bodily harm to him and damage to his property, was the wrongful conduct charged to these Petitioners and their confederates.

The wrongful conduct which was the basis of the common-law tort action in the *Laburnum* case, like the wrongful conduct which was the basis of the instant common-law tort action, was an unfair labor practice proscribed by Section 8 (b) (1) (A) of the National Labor Relations Act, as amended by the Labor Management Relations Act.

The tort in the *Laburnum* case, like the tort in the instant case, was the wrongful interference with the right to engage in a lawful business or occupation.[1]

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[1] *Sparks v. McCrary*, 156 Ala. 382, 47 So. 332, 22 L. R. A. (N. S.) 1224; *United States Fidelity & Guaranty Co. v. Millonas*, 206 Ala. 147, 89 So. 732; *Boozer v. Morris*, 219 Ala. 680, 123 So. 222; *Hill Grocery Co. v. Carroll*, 223 Ala. 376, 136 So. 789; *Carter v. Knapp Motor Co.*, 243 Ala. 600, 11 So. 2d 383, 144 A. L. R. 1177; *Evans v. Swain*, 245 Ala. 641, 18 So. 2d 400; *Local 201 of Textile Workers Union of America v. Richardson*, 245 Ala. 37, 15 So. 2d 578; *Brennan v. United Hatters*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. (N. S.) 254, 118 Am. St. Rep. 727, 9 Ann. Cas. 698; *Sargetman v. Barrows*, 263 Mass. 349, 161 N. E. 272, 62 A. L. R. 311; *Chambers v. Probst*, 145 Ky. 381, 140 S. W. 572, 36 L. R. A. (N. S.) 1207.

Petitioners' Attempt to Distinguish Laburnum Case.

The only distinction which Petitioners attempt to draw between the instant case and the *Laburnum* case, is that the plaintiff here is an employee, while the plaintiff in the *Laburnum* case was an employer, "whose rights," Petitioners say, "are not attempted to be protected by Congress in Section 7 of the National Labor Relations Act, and whose rights when violated cannot be redressed under Section 8 (b) (1) of the National Labor Relations Act," while the plaintiff here, they say further, has a specific remedy before the National Labor Relations Board under Section 8 (b) (1) of the Act for the violation of his rights (Petition, page 24).

The distinction lacks validity. Any person, whether he be employer, employee, or a stranger, whether he be the injured party, or a party having no interest whatsoever, and irrespective of his motive, can file a charge that an unfair labor practice has been committed, and thereby put in motion the investigative and preventive machinery of the National Labor Relations Board.[2]

The Laburnum Construction Corporation, in the situation with which it was confronted, could have put in motion the administrative procedure of the National Labor Relations Board to require the labor organization which was coercing and intimidating its employees, to cease and desist from such unfair labor practice. Mr. Justice Douglas pointed this out in his dissenting opinion in *United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board and*

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2 29 U. S. C., § 160 (b); National Labor Relations Board, Part 102—Rules and Regulations, Series 6, § 102.9; *National Labor Relations Board v. Indiana & Michigan Electric Company*, 318 U. S. 9, 17-19; *National Labor Relations Board v. Fulton Bag & Cotton Mills*, 10 Cir., 180 F. 2d 68, 70-71; *National Labor Relations Board v. General Shoe Corporation*, 6 Cir., 192 F. 2d 504, 505; *Duro Test Corporation*, 81 NLRB 976.

Kohler Company, ... U. S. ..., 76 S. Ct. 794, where, in referring to the *Laburnum* case, he wrote:

> "We there allowed a common-law tort action for damages to be enforced in a state court for the same acts that could have been the basis for administrative relief under the Federal Act" (76 S. St. 794, at 800).

The reports of the decisions of the National Labor Relations Board are full of instances in which the employers have invoked the jurisdiction of the Board to protect their employees from violent and coercive unfair labor practices condemned in Section 8 (b) (1) (A) of the Act.[3]

Notwithstanding the administrative relief available to the Laburnum Construction Corporation, which it could have obtained by filing a charge of an unfair labor practice with the National Labor Relations Board, this Court held that the Virginia Court had jurisdiction to entertain an action for damages sustained from the wrongful conduct which the Board had jurisdiction to prohibit. Mr. Justice Burton wrote:

> "To the extent that Congress prescribed preventive procedure against unfair labor practices, that case (Garner v. Teamsters etc. Union, 346 U. S. 485) recognized that the Act excluded conflicting state procedure to the same end. To the extent, however, that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, there is no ground for concluding that existing criminal penalties or liabilities for tortious conduct have been eliminated. The care we took in the Garner case to demonstrate the existing conflict

[3] A few illustrations are: *Sunset Line and Twine Co.*, 79 NLRB 1487; *Perry Norvell Company*, 80 NLRB 225; *United Furniture Workers of America*, 81 NLRB 886; *Colonial Hardwood Flooring Company*, 84 NLRB 563; *Cory Corporation*, 84 NLRB 972; *Fairmount Construction Company*, 95 NLRB 969.

between state and federal administrative remedies in that case was, itself, a recognition that if no conflict had existed, the state procedure would have survived. The primarily private nature of claims for damages under state law also distinguishes them in a measure, from the public nature of the regulation of future labor relations under federal law." (347 U. S. 656, at 665. Parentheses supplied).

* * * * * * *

"The 1947 Act has increased, rather than decreased, the legal responsibilities of labor organizations. Certainly that Act did not expressly relieve labor organizations from liability for unlawful conduct. It sought primarily to empower a federal regulatory body, through administrative procedure, to forestall unfair labor practices by anyone in circumstances affecting interstate commerce. The fact that it prescribed new preventive procedure against unfair labor practices on the part of labor organizations was an additional recognition of congressional disapproval of such practices. Such an express recognition is consistent with an increased insistence upon the liability of such organizations for tortious conduct and inconsistent with their immunization from liability for damages caused by their tortious practices" (347 U. S. 656, at 666).

This Court, beginning with *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, and continuing through the *Kohler Company* case, has upheld state power and jurisdiction over the pre-emption claim, in every case presented to it, in which the conduct dealt with by the state was characterized by force and violence.

The decisions of this Court have established without peradventure that the plenary power of the forty-eight states to deal with force and violence in any appropriate

manner was not impaired or interfered with by the enactment of either the National Labor Relations Act or the Labor Management Relations Act. The most recent statement of this great truth was made by Mr. Justice Reed, writing for the majority in the *Kohler Company* case, as follows:

> "It seems obvious that § 8 (b) (1) was not to be the exclusive method of controlling violence even against employees, much less violence interfering with others approaching an area where a strike was in progress" (76 S. Ct. 794, at 798).

In support of that statement the *Laburnum* case was cited.

In the *Kohler Company* case, this Court sustained an injunction issued out of a state court, even though it duplicated an available remedy within the jurisdiction of the National Labor Relations Board.

That the existence of force and violence is the focal point in the solution of the problem of jurisdiction, is manifest from a comparison of the *Kohler Company* case with the decision in *Garner v. Teamsters Union*, 346 U. S. 485, in which the Court denied the jurisdiction of the state court to enjoin peaceful picketing, but in so doing was careful to point out:

> "Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes" (346 U. S. 485, at 488).

National Labor Relations Board Has No Jurisdiction to Award Damages.

In order to give any semblance of plausibility to their argument, Petitioners must and do contend that the National Labor Relations Board has power and jurisdiction

to award damages to an employee who has been prevented from engaging in his occupation by mass picketing, force and violence.

In view of the holding in the *Kohler Company* case that Section 8 (b) (1) was not intended to be the exclusive method of dealing with violence, the existence of such alleged power of the Board to award damages to an employee injured by a violation of that Section would not oust the jurisdiction of the state court.

Aside from this, contentions that it has power to award damages in cases identical to this case have been uniformly rejected by the National Labor Relations Board.[4]

According to Petitioners' argument, this power and jurisdiction flows from the portion of Section 10 (c) of the Act, giving the Board authority to require any person guilty of an unfair labor practice, to take such affirmative action

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[4] *Colonial Hardwood Flooring Company*, 84 NLRB 563; *United Mine Workers*, 92 NLRB 916; *National Maritime Union of America*, 78 NLRB 971, which contains an excellent discussion of the question, and points out the view entertained by the Congress during its consideration of the Act that the Congress regarded the Board as a tribunal without jurisdiction to adjudicate claims for damages, compensatory or punitive. The disclaimer of this jurisdiction by the Board was approved in *Progressive Mine Workers of America v. National Labor Relations Board*, 7 Cir., 187 F. 2d 208, at 307. This administrative construction of the Act has been acquiesced in by the Congress for many years. The reasoning of the Board in *Colonial Hardwood Flooring Company*, *supra*, is not inconsistent with the reasoning of this Court in *Phelps-Dodge Corporation v. NLRB*, 313 U. S. 177, as is contended; what the Court there wrote was in rejecting the contention that the Board lacked power to order the employer to employ a person who had not theretofore been in its employment because of discrimination in hiring policy, as distinguished from its power to order reinstatement of one once employed, who had been discharged by reason of discrimination. Nor are the above decisions of the Board contrary to *Virginia Electric Power Co. v. NLRB*, 319 U. S. 533. That was also a discrimination case, and in sustaining the power of the Board to order repayment of union dues withheld for a company-dominated union, the Court likened the order to a back pay order, and expressly forestalled any possible thought that it was "the adjudication of a mass tort" (319 U. S. 533, at 543).

as will effectuate the policies of the Act. We have heretofore pointed out that any person can file a charge of an unfair labor practice with the National Labor Relations Board and can thereby set the machinery of the Board in motion to prevent an unfair labor practice. If the argument which Petitioners make is sound, then by the same token, the Board had power and jurisdiction to require the labor organization sued in the *Laburnum* case to pay damages to the Laburnum Construction Corporation, because the Board could just as reasonably determine that such requirement would effectuate the policies of the Act, as would the requirement that a labor organization pay damages to an employee whose right to work had been interfered with. This Court in the *Laburnum* case was in complete disagreement with that concept of such broad and far reaching power and jurisdiction of the Board, as is evidenced by its statement that:

> "The Labor Management Relations Act sets up no general compensatory procedure except in such minor supplementary ways as the reinstatement of wrongfully discharged employees with back pay." 61 Stat. 147, 29 U. S. C. (1952 ed.), § 160 (c); 29 U. S. C. A., § 160 (c)." (347 U. S. 656, at 665.)

II. SECOND ALLEGED FEDERAL QUESTION.

The claim is made, or rather we should say the claim is stated by Petitioners, that the action of the trial court in giving plaintiff's written requested Charge 9 infringed upon the federally protected right to strike, because, it is said, the charge permitted the jury to return a verdict for plaintiff without a finding that work was available to plaintiff during the strike (Petition, pages 11-13). Assuming contrary to the holding of the Supreme Court of Alabama, that the charge should be construed to have that meaning, it did not deprive the Petitioners of the right

to strike, or in any manner affect or detract from that right. Indeed, Charge 9 expressly states that picketing is lawful, and it directs a verdict for the plaintiff only on the hypothesis of the jury being reasonably satisfied from the evidence that the defendants stationed pickets on a public street, as alleged in the complaint, for the purpose of preventing the plaintiff from entering his place of employment, by means of intimidation, threats, coercion, force or violence, and that the plaintiff was thereby denied access to his place of employment. The defendants had no right, federal or otherwise, to engage in such unlawful picketing. Therefore, the charge could not possibly have deprived them of the federally protected right to strike or to picket peacefully.

Aside from the above, the Supreme Court of Alabama was correct in its holding that Charge 9 should not be construed so as to authorize a verdict for plaintiff without a finding that work was available to him, and that he lost work by reason of the unlawful picketing. The term, "place of employment", connotes work. The idea conveyed by the expression that the purpose of the pickets was to prevent plaintiff from entering his place of employment, and that he was denied access to his place of employment, was that he was prevented from working. There naturally would have been no reason for the pickets to have prevented plaintiff from entering his place of employment unless work was available to him, and no reason for plaintiff to have wanted to enter except for the purpose of working. Especially is this the reasonable construction of Charge 9 when it is considered in the light of the oral charge and the Petitioners' given written charges numbered 5, 6, 10 and 11 (R. 624, 637, 638). Charges 5 and 6 are illustrative, and are, respectively:

"5. I charge you that unless you are reasonably satisfied from the evidence in this case that the proxi-

mate cause of plaintiff's inability to work at the Decatur plant of Calumet and Hecla Consolidated Copper Company (Wolverine Tube Division) during the period from July 18, 1951, to August 22, 1951, was that a picket line was conducted by the defendants in a manner which by force and violence, or threats of force and violence prevented plaintiff from entering the plant, and unless you are also reasonably satisfied from the evidence that work would have been available to plaintiff in the plant during said period, except for picketing in such manner, you should not return a verdict for the plaintiff" (R. 637).

"6. I charge you that unless you are reasonably satisfied from the evidence that the acts complained of by plaintiff occurred, and that the plaintiff suffered a loss of wages as the natural and proximate result of said acts, you should return your verdict for the defendants" (R. 637).

The Supreme Court of Alabama had good grounds for its conclusion that Charge 9 was not erroneous when reasonably construed.

III. THIRD ALLEGED FEDERAL QUESTION.

Under heading IV, on page 5 of the petition, the Petitioners state that one of the questions presented is: Did the Supreme Court of Alabama deny the federally protected right to strike by its decision that the verdict was authorized when, Petitioners contend, there was no evidence in the record to show that work would have been available to plaintiff if he had entered his place of employment and when, they say, the evidence demanded the conclusion that the employer closed its plant because of a lawful strike engaged in by a great majority of employees and not because of alleged improper picketing. That contention

pursued in more detail under the heading "Third Federal Question" beginning on page 13 of the petition.

Here again it seems reasonably clear that no federal question is presented. At every stage of the trial the right of the defendants to strike and to picket pursuant to their strike was recognized. The trial court in the oral charge to the jury explicitly stated defendant's right to strike (R. 625-626, 627, 630). There could have been no doubt in the minds of the jury that defendants had the right to strike and the right to picket, and that they could be held liable only if their picketing was characterized by force and violence. Mass picketing and force and violence, and consequent loss of wages and suffering of mental pain and anguish, were alleged in both counts of the complaint. Proof of them was essential to a recovery by the plaintiff. The jury was repeatedly instructed that the plaintiff could not recover unless he had reasonably satisfied the jury from the evidence that the acts complained of had occurred and that plaintiff had suffered a loss of wages as the natural and proximate result of such acts (Defendants' given written Charges 5, 6, 10 and 11, R. 637-638). The defendants having been accorded their right to strike and their right to picket, and these being the only federal rights here asserted, it is difficult to comprehend how any federal question can arise from the alleged insufficiency of the evidence to establish the damage claimed by the plaintiff.

The Sufficiency of the Evidence.

The jury resolved the issues in favor of the plaintiff. The defendants stand convicted by the verdict of having maliciously, by the use of force and violence, prevented plaintiff from engaging in his employment. The verdict of the jury established not only the wrongful conduct of the defendants, but also the loss of wages and mental pain and anguish suffered by the plaintiff. Petitioners insinuate prejudice on the part of the jury, but they have every

reason to know that neither prejudice, bias nor sympathy influenced the trial judge when he overruled their motion for new trial, and thereby placed his stamp of approval on the verdict. This was the same trial judge who initially sustained the plea to the jurisdiction of the Court, a ruling fatal to the maintenance of the action until it was reversed (*Russell v. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America*, 258 Ala. 615, 64 So. 2d 384). This was the same trial judge who set aside a verdict in favor of Burl McLemore, a plaintiff in a companion case, when he concluded that the argument of counsel to the jury in that case was improper (*McLemore v. International Union, United Automobile, Aircraft & Agricultural Implement Workers of America*, ... Ala. ..., 88 So. 2d 170), which case is referred to in footnote 13 on page 38 of the petition. Truly, the verdict received added verity from the judgment of the trial court overruling the motion for new trial.

Not content to abide by the verdict against them, the Petitioners also criticize the Supreme Court of Alabama for not detailing the evidence sufficiently to satisfy them. Having indulged in this criticism, Petitioners then devote two and one-half pages of the petition to cataloguing a few favorable, but meager bits of the more than 500 pages of testimony contained in the record, by which we suppose the Petitioners intend to persuade the Court that the evidence was not sufficient to support the verdict. They refer to certain tendencies of the evidence as "uncontradicted facts," some of which, in truth, are neither uncontradicted, nor facts.[5]

[5] In the second paragraph on page 16 of the petition it is stated as an uncontradicted fact that over 400 employees of the company's slightly over 500 hourly paid employees voted unanimously to go on strike and supported the strike and participated in the picketing. The number of union members supporting the strike is based purely on estimates which ranged from 200 to 400 (Rec. 91, 337, 353, 507). A good indication of the number of union members is gained

In view of the argument in the petition, we will briefly mention some salient tendencies of the evidence which Petitioners either overlooked, or, possibly for the sake of brevity, omitted. The Union's regional director, assistant regional director, and international representative were all three present for the beginning of the strike; at meetings of the union members on the afternoon before the strike began, they urged that all union members be present the next morning to picket the only entrance to the plant en masse (R. 352-353). Plaintiff tried to report for work at his customary time and in his usual way, and remained at the picket line in his car trying to get through it for over an hour and a half, but the pickets by massing in front of him and by congregating on both sides of him, and by threats, persistently refused him admission to the plant (R. 82-95). The pickets treated Burl McLemore, an employee who tried to get through the picket line, in substantially the same manner (R. 148-171). The plaintiff testified that there were approximately 200 employees

from the fact that slightly over 51% of those participating in the representation election, held shortly before the strike, voted in favor of the union (R. 497, 557, 513).

In the third paragraph on page 16 of the petition it is stated that Howard Babis, company foreman, testified that he was advised by Mr. Oakes or some other supervisory official of the company that the plant would be closed during the strike. In support of that statement Petitioners cite pages 307 and 307 of the record. Those pages can be searched in vain for any such testimony by Babis.

In the same paragraph it is stated that the company stopped charging the furnace prior to the time the next shift was to come to work. The fact is that the company did not stop charging the heating furnace with copper billets until 7:30 A. M. (R. 370), and that when the third shift left work at 8:00 o'clock the furnace was almost full of copper billets, and that the proper and normal procedure in the event of a shutdown at 8:00 A. M. would have been to stop charging the furnace about three or three and one-half hours prior to that time, since it takes that length of time to empty the furnace (R. 370, 372-375, 286-288).

In the same paragraph it is stated that W. A. Bowling was told by his foreman that the plant was going to close during the strike. Bowling did so testify, but the inherent improbability of his testimony appeared from his cross-examination (R. 387).

present that morning who had brought their lunches and were prepared to go to work (R. 95), and examined some twenty of these employees who testified that they reported for work on the morning the strike began and had their lunches with them, and in nearly every instance had ridden to the plant in a car with several other employees, and generally had no knowledge of the strike until they reached the picket line (R. 230-279). No hourly rated employee entered the plant that morning (R. 288).

The defendants have never been able to explain satisfactorily why they were so determined to keep the employees out of the plant, if they really had an agreement with management to close the plant. They have not been able to explain why they would not allow the plaintiff through their picket line if work was not available to him. Nor have they yet explained why on a later occasion, the pickets swarmed on the company gasoline locomotive, which was proceeding on its way to pull several carloads of raw copper into the plant, and immobilized it by taking the ignition key from it, cutting the wires leading to the spark plug terminals, cutting the fan belts and air hose, and removing the distributor head (R. 289-299).

One persuasive indication that the alleged agreement to close the plant was not made, is that the invariable practice of the company was to notify all employees when the plant was to be shut down, but on this occasion no notice of an intention or decision to close the plant was given, although ample time was available for the giving of such notice to all three shifts after the conclusion of the union-management meeting at which defendants' testimony tended to show that the disputed agreement was made (R. 312, 372, 599-602).

Another convincing circumstance clearly demonstrating the improbability of the agreement to close, is the fact,

established by defendants' witness Sherman as well as by plaintiff's witness Cornell, that the third shift continued to charge the heating furnace with copper billets until about 7:30 A. M., although the proper and normal procedure, if the plant was to have been shut down at 8:00 A. M., would have been to stop charging the furnace about 4:30 A. M. so that it would have been empty at closing time (R. 368-389). The plant machinery, draw benches and furnaces were left in their usual and customary condition, similar to the situation which would exist under normal conditions with the first shift to commence their work at 8:00 A. M. o'clock (R. 288).

Another strong support for the verdict of the jury is found in the fact that one month after the strike commenced, when the State Highway Patrol had arrived at the scene of the picketing to preserve order and to keep the street open, approximately 230 hourly rated employees entered the plant and worked (R. 99), although the pickets were again present in their initial force (R. 359).

There are many other facts and circumstances which could be referred to in order to illustrate the ample evidence which impelled the conclusion which the jury reached. But we forego further discussion except to comment on the actual absurdity of the contention that management agreed to close the plant, when that contention is weighed in the light of the wholly inconsistent conduct of the defendants in massing several hundred pickets at the only entrance to the plant, and doing whatever the occasion demanded to intimidate the employees who wanted to work so as to keep them out of the plant. If there had been any such agreement, one picket with one sign would have sufficed. And if any such agreement had been made, the plaintiff would have been permitted to go through the picket line to the gate of the plant and get that information first hand. No matter how many wit-

nesses may have sworn to the making of such an agreement, these considerations revealed the glaring infirmity of such testimony and destroyed its probative value.

CONCLUSION.

Petitioners fears of dire consequences which might flow from the denial of their petition are idle. Such consequences can easily be avoided by their giving heed to the admonition, implicit in the decisions of this Court, that picketing should be peaceful and that labor organizations should abstain from blocking streets and entrances to plants by mass picketing, and from the use of force, violence, coercion and intimidation in their picketing.

If Petitioners will limit their picketing to peaceful picketing, they will not be required to defend against actions such as this one by an employee to vindicate his rights which were violated by such illegal picketing. If Petitioners will respect the law and the rights of others, it will not be necessary for the Governor of Alabama to order out the State Highway Patrol to preserve law and order and to keep the streets open, as was necessary in this case when it became apparent that local law enforcement officers were unable to control the picketing. Nor will it be necessary for the Governor of Indiana to employ the National Guard with its tanks and bayonets, as in the fairly recent strike by this same union against the Perfect Circle Company. If Petitioners will discontinue the use of force and violence, it will not be necessary for them to defend against suits such as that of the Wisconsin Employment Relations Board seeking the injunctive process of the Wisconsin Courts to preserve law and order, as in the case of the Kohler Company strike which was before this Court in the *Kohler Company* case.

Petitioners in effect, are asking this Court to grant them immunity from liability for their torts. But illegal ac-

countability for wrongful conduct is one of the cornerstones of the common law; it is a sobering reminder to refrain. That is one of the virtues of the verdict here.

Respectfully submitted,

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